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LAW ENFORCEMENT 2.0: LEGAL AND ETHICAL CONSIDERATIONS FOR POLICING PRIVATE SPACE ACTORS EX TERRA

Abstract

The increasing scope of private actors engaging in the use and exploration of outer space, now and in the future, is proffering a myriad of activities directed towards and conducted in outer space. These include human space transportation, space resource utilization, space tourism, space stations and prospective human settlements, as well as an influx of supporting space-based assets and platforms. It is likely, therefore, that as access to space opens and the number of multi-national/ multi-cultural space actors expands, concerns for protecting the rights, safety and security of these nongovernmental entities and their agents will become a priority. From a comparative historical perspective, the extension of private interests and actors into space is similar to the rise in technoscience and long-distance corporations in the 15th century. Traditionally, long-distance corporations enacted control of their ships through people, technology and systematic practice. This signified incorporating security details and defensive weapons onboard the vessels to protect and defend their physical and intellectual property interests – a type of private law enforcement when rule of law was uncertain. Three primary questions are raised here concerning outer space: (1) under the current space law regime, and in respect to the extreme space environment, what practical, legal and ethical mechanisms may be employed by private space actors to police and protect their safety, security and interests while guarding against conflict; (2) particularly, to what extent would such policing or protection measures be deemed 'non-aggressive' and in compliance with space law; and (3) what protocols/guidelines can apply if conflict ensues between private (nongovernmental) actors in space.

The purpose of this paper/presentation is two-fold. First, this paper will address the intention and scope of public/private safety, security and law enforcement in society, and the application of law and long-arm jurisdiction over private space actors beyond Earth. Here we raise pertinent ethical issues, challenges and concerns and identify where law, policy or normative frameworks are silent, inadequate or lacking for space. Secondly, this presentation will address analogies and trends for long-distance corporations historically as well as common carriers today in regard to public safety, security and conflict, highlighting comparisons and distinctive concerns particular to space. In conclusion, we will present issues for consideration in the application of nongovernmental safety/security practices as well as practical mechanisms, protocols and recommendations for policymakers and the space industry looking forward.